IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8053 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

CENTRAL BANK OF INDIA

Versus

MAVJI C LAKUM

Appearance:

1. Special Civil Application No. 8053 of 1998

MR ARUN H MEHTA for Petitioner No. 1

MR NALIN K THAKKER for Respondent No. 1

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 25/07/2002

CAV JUDGEMENT

1. In this petition the main question that is involved is what is the scope of the Labour Court or the Tribunal or National Tribunal while exercising power under Section 11-A of the Industrial Disputes Act, 1947

(for short "the Act") ? Though this question has time and again come for consideration before the Apex Court as well as this Court and other High Courts, in this petition the same has been extensively argued by both the sides and I am, therefore, required to deal with that issue and determine the same on the basis of submissions made by the learned counsels and the decisions and provisions of law cited by them in support of their respective submissions.

2. The facts that have given rise to the present controversy can be stated as under :-

2.1. The petitioner is Central Bank of India having its Head Office at Bombay and a Branch Office at Jamnagar. The respondent joined the service of petitioner at Jamnagar on 1/9/1951 as a Peon and subsequently he was promoted to the post of Head Peon. In the year 1981 he was working as Head Peon and at that time the petitioner received repeated complaints regarding the misbehaviour of the respondent with the clients of the bank, its officers and the other members of the office staff. In view thereof, the petitioner served the respondent with a charge-sheet and after detailed inquiry into the acts of misconduct of the respondent, he was discharged from service with effect from 22nd May, 1984.

2.2. The action of the petitioner discharging the respondent from service was challenged by him in the Court of the learned Civil Judge [J.D.] at Anjar by instituting Civil Suit being Civil suit No. 89 of 1984. The said suit came to be dismissed, against which the respondent preferred Civil Appeal No. 11 of 1987 before the District Court, Kutch at Bhuj. The said appeal was partly allowed. Though the District Court directed reinstatement of the respondent, it denied the backwages. It also directed the petitioner bank to hold inquiry afresh. Hence, Second Appeal No. 139 of 1989 was preferred by respondent before this Court wherein this Court [Coram : S.K. Keshote, J.] awarded 75% back wages from the date of filing of the suit and not from the date of discharge.

2.3. After the aforesaid proceedings, the departmental inquiry was started once again on the same charges referred to hereinabove. The Inquiry officer recorded his findings on 2nd June, 1990 and found the respondent guilty of charges nos. 1 and 2. The said officer, however, did not find that the respondent's behaviour was riotous. The Inquiry Officer also found the respondent

guilty of other charges, namely charge nos. 3, 5 and 7, but he did not find the respondent guilty of charge nos. 4 and 6. Acting on the basis of the said findings of the Inquiry officer, the Disciplinary Authority again issued show cause notice dated 7th February, 1991 calling upon the respondent to show cause why the punishment of dismissal should not be imposed upon him. The petitioner submitted his reply to the said show cause notice on 18th March, 1991 wherein he gave detailed explanation to the charges held to be proved against him. He also requested the Disciplinary Authority that even if the charges are held proved, considering the nature of the said charges, punishment of dismissal contemplated by Disciplinary Authority was very harsh and the Authority should take lenient view in the matter. On the basis of the submissions made in the said explanation, the respondent requested the Authority to quash the notice issued against him.

2.4. The Disciplinary Authority by taking into consideration the entire record placed before it with regard to the inquiry held against the respondent including his explanation submitted in response to the show cause notice dated 7th February, 1991 issued by the Authority and after detailed consideration of all the relevant facts, the provisions of the bank rules and regulations and all other aspects concerning the issues, came to the conclusion that the respondent was guilty of committing acts of misconduct as per charge nos. 1, 2, 3, 5, 6 and 7 and the Disciplinary Authority proposed various punishment on each count but ultimately a composite punishment of discharge from bank's service was ordered by him.

2.5. Having been aggrieved by the order of discharge from the service issued by the Disciplinary Authority, the respondent approached the Appellate Authority i.e. the Assistant General Manager on 4th May, 1991. The Appellate Authority disposed of the appeal confirming the punishment of discharge from service awarded by the Disciplinary Authority vide its order dated 26th March, 1991.

2.6. Being dissatisfied with the order of Appellate Authority, the respondent raised dispute with regard to his discharge from service under the provisions of the Act, which ultimately came to be referred to the Industrial Tribunal (Central) at Rajkot for adjudication vide Government of India, Labour Department order No. 12012-264 dated 27th January, 1993. The said proceedings came to be numbered as Reference [ITC] No. 1 of 1993.

The Tribunal came to the conclusion that the departmental inquiry held against the respondent was just and proper. This issue came to be decided by the Tribunal in light of application at Exh. 27 submitted by the respondent challenging the validity of the inquiry. So far the merits of the allegations made against the respondent were concerned, the Tribunal came to the conclusion that there was no evidence to impose penalty of discharge, but it held that there was some misconduct committed by the respondent. However, it also held that the acts of misconduct could not be termed as 'so serious' that the respondent for committing them, was required to be removed from service. The Tribunal, therefore, partially allowed the reference and the order of discharging the respondent from service was set aside and instead thereof, it imposed punishment of withholding his one increment with future effect. The award of the Tribunal is dated 2nd April, 1998.

2.7. In the meanwhile the respondent, upon reaching the age of superannuation of 60 years, retired from service with effect from 3rd September, 1994.

2.8. In view of the Tribunal's decision, the petitioner has approached this Court by filing the present petition.

3. Mr. Arun H. Mehta, the learned counsel for the petitioner has mainly challenged the decision of the Tribunal on the ground that the Tribunal has exceeded its power vested in it by the provisions of Section 11-A of the Act. Mr. Mehta has submitted that perusal of the judgment of the Tribunal clearly shows that it has nowhere discussed in detail why it is interfering with the decision of the Disciplinary Authority of the decision of the Appellate Authority on the question of the quantum of punishment even when very little scope is given to the Tribunal by the provisions of Section 11-A of the Act. He has further submitted that the Tribunal has not reached to the conclusion that the penalty of discharge imposed upon the respondent was disproportionately heavy or excessive and without giving such finding, it has substantially interfered with the punishment imposed on the respondent. Mr. Mehta has submitted that the complexion of acts of misconduct alleged against the delinquent would vary from institution to institution. In other words, considering the business dealt with or the service rendered by a particular institution the alleged act of misconduct may not entail serious consequence so far the said institution is concerned. However, the same act of

misconduct may cause serious harm to the reputation, business, etc. of different institution. He, therefore, submitted that some wild language used by the respondent during the working hours for the valued customers of the bank may not only tarnish the reputation of the bank, but it may also result into loss of business to the bank since the aggrieved client may well choose to close his account in such bank and avail the service of some other bank. In support of its contentions Mr. Mehta has placed reliance on several decisions of the Apex Court and has drawn my attention to the scope of the Tribunal or the Labour Court under Section 11-A of the Act and the limits carved out by these decisions within which the Court and the Tribunal are required to exercise this power.

3.1. As against that, Mr. N.K. Thakker, the learned counsel for the respondent has vehemently urged before me that sitting under Article 227 of the Constitution of India my jurisdiction is very limited and I cannot reappreciate the evidence on record and disturb the conclusions and the ultimate decision reached by the Tribunal. He further submitted that prior to introduction of section 11-A of the Act, the Labour Court and the Tribunal hardly had any scope to interfere with the findings of the Inquiry officer and the penalty imposed upon the delinquent on the strength of such findings unless the inquiry itself was found to be against the provisions of law or violative of principles of natural justice. However, with the introduction of section 11-A powers have been conferred upon the Labour Court as well as the Tribunal to reappreciate the entire evidence adduced before the Inquiry officer and to examine each and every aspect thereof and to come to its own decision whether the punishment imposed on the delinquent was justified. Mr. Thakker therefore, submitted that when the Tribunal has exercised this power u/S. 11-A of the Act, this Court has very limited jurisdiction to interfere with the same. He also contended that looking to the acts of misconduct alleged against the respondent, it can well be said that none of the allegations is serious one and each allegation pertains to a solitary incident. The Tribunal therefore was completely justified in altering the punishment and reducing it from the discharge to stoppage of one increment with future effect. Mr. Thakker lastly submitted that this petition does not have any merit and deserves to be dismissed. In support of his contentions Mr. Thakker has also relied on certain decision, which will be discussed in the course of this judgment.

4. Considering the nature of submissions advanced before me by the parties, it is desirable to first refer to the provision of section 11-A of the Act. Section 11-A reads as follows :-

> "11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.-
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> Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workmen on such terms and conditions, if any, as it thinks fit, or give such other relief to the workmen including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require;
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> Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

This section was brought into force by virtue of Act No. 45 of 1971 with effect from 16th December, 1971. With the introduction of this section, power has been conferred upon the Labour Court, Tribunal or National Tribunal, while dealing with the industrial dispute relating to discharge or dismissal of a workman to set aside the order of discharge or dismissal and direct reinstatement of the workman in case it is found that such discharge or dismissal was not justified. Power is also conferred upon them to reduce the quantum of punishment and award any lesser punishment in lieu of discharge or dismissal. Thus, it is very clear that after the introduction of section 11-A the Labour Court, Tribunal and the National Tribunal have been equipped with the power to come to its own conclusion whether in a given case the imposition of punishment of discharge or dismissal from the service is justified. It is for that purpose they are authorized to go into the evidence that has been adduced before the Inquiry Officer in detail and find out whether the punishment of discharge or dismissal is commensurate with the nature of charges proved against

the delinquent.

4.1. However, the question that remains to be considered is whether the forums described above have unfettered power while exercising its discretion like the one conferred upon the appellate forum or it is required to be exercised only in certain exceptional circumstances. Obviously this question arises only when the Tribunal or the Labour Court finds the inquiry to be in order. If the inquiry is found to be illegal or violative of principles of natural justice, certainly the Tribunal can hold the same to be illegal and on that sole ground the punishment of discharge or dismissal can be set aside. In that case substitution of the same with lesser penalty will not arise. As against that, when the inquiry is found to be absolutely legal and in consonance with the principles of natural justice, the Tribunal or the Labour Court will be required to go into the evidence to find out whether the Disciplinary Authority is justified in imposing the penalty of dismissal or discharge.

4.2. Mr. Mehta did not dispute the power of the Labour Court and/or the Tribunal to go into the evidence to find out whether discharge or dismissal is justified. However, his emphasis was on the issue whether the Labour Court or the Tribunal can exercise this power lightly and/or easily or that it has to be exercised only in exceptional circumstances and in a very restricted manner. According to him, unless and until the decision of the Disciplinary Authority is so perverse or unreasonable so as to shock the judicial conscience of the Court or it has been based on extraneous considerations or without taking into account the relevant considerations or it is so disproportionate to the nature of the charges proved that no reasonable person would have taken such decision and further that these aspects are discussed in detail, appropriate reasons are given why it is inclined to hold so and definite findings are given to that effect, then only such power can be exercised. If all or any of this is missing, then the Labour Court or the Tribunal even if it comes to the conclusion that the punishment of discharge or dismissal could have been avoided and lesser punishment could have been awarded cannot substitute its own decision in that behalf.

4.3. The scope of Section 11-A as already stated above has been the subject matter of several decisions of the Apex Court and this Court. I will, therefore first refer to the decisions rendered by this Court. The learned

single Judge of this Court in the case of Chanduji Senthaji Khant v. GSRTC reported in 1995 (2) GLH 232 elaborately considered the scope of Section 11A and the jurisdiction of the Tribunal or the Labour Court while exercising its discretion in the matter of penalty and made pertinent following observations:

> "Since qua non for exercising discretionary powers under Section 11A of the Act, is satisfaction of the tribunal that punishment imposed by the disciplinary authority is disproportionate to the misconduct proved. Unless that conclusion is reached the question of exercise of discretion for the purpose of substituting lesser penalty does not arise and if without recording any such conclusion, the Tribunal or Labour Court, as the case may be, embarks upon the question of penalty by assuming certain propositions not connected with workman, it can well be said that exercise of discretion in such cases cannot be sustained and award can be interfered with."

5. In the case of D.C.G.R.T.C. v/s. Ratansing K. Thakor reported in 1997 (2) G.L.H. at page 230 this Court while dealing with provisions of section 11-A has laid down as under:-

> "4. I have given my thoughtful consideration to the submissions made by the learned Counsel for the petitioner. The decision of the Division Bench of this Court has not been correctly read by the Labour Court. It is nowhere laid down that in no case penalty of dismissal could be given to the delinquent workman. Apart from this, the Labour Court have not (sic) interfered with the punishment of dismissal given to the workman only on the ground that there is wholesome unemployment in the country and there is no unemployment insurance scheme. If that position is allowed, then in no case penalty of dismissal, removal or termination can be given. The Apex Court in the aforesaid two cases held that in the matter of punishment to be given to a delinquent on proved misconduct the Court and Tribunal has very limited jurisdiction. But interference could be made in the matter of penalty to be given where the penalty is considered to be shocking the judicial conscience of the Court and not otherwise. In the present case, in the facts of the case which have come on

record, coupled with the fact that the inquiry was not found defective and the charges framed against the workman was found proved, can the interference made by the Labour Court with the punishment which has been given to the workman be said to be justified? The reply to this question is obviously in negative. The Labour Court has failed to take into consideration the important fact that the Corporation provided public utility service and it cannot be compelled to continue an employee who deliberately caused damage to the bus and deliberately made the bus to break down, which has resulted in causing inconvenience to the passengers travelling in the said bus. Because of the aforesaid deliberate act of the workman, the passengers travelling in the said bus were compelled to go to their destination on foot. This conduct of an employee of the Corporation has resulted in damaging the reputation of the Corporation. Deliberate causing of damage to the bus as well as allowing three unauthorized persons to travel in the driver's cabin of the bus are serious misconducts. Above all, the respondent workman had not allowed the conductor to issue tickets to those three persons. The respondent-workman interfered with the discharge of duties by the conductor and he forced him to put the Corporation to loss of money which could have been collected from those three persons. Such interference of the driver in the discharge of duties by the conductor is a very serious misconduct and the minimum punishment for such persons should have been dismissal from service. The Labour Court has interfered with the punishment of dismissal without giving any cogent and justifiable reasons. It is not a case where the matter should have been taken lightly. The considerations weighed with the Labour Court are not germane to the facts of the case. The punishment which has been given to the delinquent in a given case has to be considered with reference to the gravity of the misconduct alleged and proved and not with reference to the employment of that person. If the Corporation is compelled to continue such a driver in its service it will not only encourage indiscipline among other persons, to the extent of putting the passengers travelling in the Corporation's bus to inconvenience, but also tarnish the reputation of the corporation. Taking into consideration the

totality of the facts of the case and the law laid down by the Apex Court, it is a case where interference with the award made by the Labour Court is called for."

5.1. Again this Court in the case of Rajkot Municipal Corporation v/s. Navinchandra I. Vyas reported in 1997 (2) G.L.H. at page 331 dealt with provisions of section 11-A of the Act, wherein this Court categorically said that power of the Labour Court to interfere with the penalty is not unguided and the same has to be exercised judiciously and not on the basis of theory of socialism or social justice. In the said judgment this Court has taken into consideration various decisions of this Court and the Apex Court. It has been held as under :-

"11. Mr. Clerk, in this connection rightly invited the attention of this Court to the subsequent decision of the Apex Court in the case of Christian Medical College Hospital Employees' Union v. Christian Medical College, Vellore reported in AIR 1988 SC 37. While negating the argument that application of provisions of Industrial Disputes Act to the minority institution would abridge the fundamental right of the minority educational institution the Court held that the Industrial Tribunal or the Labour Court has under Section 11A of the Act powers to substitute a lesser punishment in lieu of the order of discharge/dismissal passed by the management. However, confirmation of such power is not conferring an arbitrary or absolute power in the Industrial Tribunal or Labour Court. The power under Section 11A of the Act has to be exercised judiciously and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of the Management under Section 11A of the Industrial Disputes Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. The Industrial Tribunal or the Labour Court has to give reasons for the satisfaction. Such reasons may not be fanciful or whimsical and they are once again subjected to judicial review by the High Court or the Supreme Court. Substitution of a punishment therefore solely on the ground that the theory of socialism or social justice requires that lenient view should be taken is untenable in law and tantamount to permitting the Labour Court or the Industrial Tribunal to act

beyond the scope of Section 11A of the said Act. This Court also has considered the question of substitution or modification of penalty imposed by the disciplinary authority, and based on recent decision of the Supreme Court, this Court in the case of Vadodara Municipal Corporation Kamdar Karmachari Union v. Municipal Corporation of Vadodara and another reported in 1993 (9) GLH 640 made following observations which are in tune with and consistent with the binding precedents of the Apex Court and the objective sought to be achieved by the legislature by introduction of Section 11A of the I.D. Act, 1947 :

"This case reminds this Court of the following observations of Chandrachud C. J. in the case of Shankardas v. Union of India reported in AIR 1985 SC 772 :

"Cases which evoke sympathy come frequently before the court. But pity not often."

In para. 13 of this udgment the learned Single Judge of this Court has further observed as under :-

"13. In my opinion, applying the principle of law as stated hereinabove, the Labour Court was not justified in interfering with the order of penalty of dismissal without assigning any reason whatsoever. To state that the labour law is a social legislation and therefore punishment is disproportionate is to abandon the exercise of judicial discretion and to undertake exercise of such power to sermoning or advocating a philosophy a the cost of the employer."

In the case of Ranjit Thakur v. Union of India reported in 1987 (4) SCC 611 the Supreme Court of India considered the question of doctrine of proportionality in the matter of awarding punishment and it observed as under :

"The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court material. But the sentence has to sit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount

> itself to conclusive evidence of bias. The doctrine or proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court material, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial service."

The Division Bench of this Court also in its decision reported in 1994 (2) LLJ 332 took the same view of Section 11A of the Act and held that the Labour Court or Tribunal is not having unguided power to set aside the just order passed by the management. Power under Section 11A shall have to be exercised judiciously and the Tribunal can interfere only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman. In the case before the Division Bench the workman, a conductor of GSRTC was guilty of misappropriation of amounts of fare collected from passengers, and leniency in such case was deprecated by the Division Bench."

The aforesaid decisions of this Court prescribe the scope of the Labour Court and/or Tribunal while exercising power u/S. 11-A of the Act. The scope of the power conferred on the Labour Court and the Tribunal under Section 11-A is very well defined in these decisions. The power is not unguided and the same has to be used judiciously and sparingly. Unless and until the Labour Court or the Tribunal comes to the conclusion that considering the material produced during the inquiry, the penalty of discharge or dismissal imposed upon the delinquent, is shockingly disproportionate or that no reasonable person would have imposed such punishment on the delinquent, the order of punishment should not be disturbed. Further that specific finding has to be arrived at by assigning cogent reasons. It cannot in cursory manner deal with this issue and substitute any lesser punishment merely by saying that the punishment of dismissal or discharge on the basis of the facts placed before it the same is not warranted for. These decisions also make clear that this Court can certainly, even while exercising jurisdiction under Article 227 of the

Constitution of India, examine this aspect and find out whether interference by the Labour Court with the punishment is justified.

5.2. The Division Bench of this Court in the case of Gujarat State Road Transport Corporation v/s. Prabhatshankar K. Acharya reported in 1992 (2) G.L.H. at page 354 in slightly different context has laid down the circumstances in which the Tribunal can interfere with the findings of the management. They are as under :-

"(1) Want of good faith,
(2) Victimisation or unfair labour practice
(3) Basic error or violation of principles of natural justice
(4) Finding completely baseless or perverse
(5) Colourable exercise of power or want of bona fide, and
(6) Punishment shockingly disproportionate regard being had to the particular conduct or the past record or is such that no reasonable employer would even impose in like circumstances unless he is actuated by considerations of victimisation or unfair labour practice."

It may be of importance to mention here that in a English case viz. in Council for Civil Service Unions v. Minister of Civil Service [1983] 1 S.C. 768 which is known as GCHQ case, Lord Diplock said :

"Judicial review has, I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call illegality, the second "irrationality" and the third "Procedural impropriety". This is not to say that further development on a case by case basis may not in course of time and further grounds I have in mind particularly the possible adoption in future of the principles of "proportionality" which is recognized in the administrative law of several of our fellow members of the Europian Economic community. ...."

These factors, as can be found from the decisions of this

Court as well as the Apex Court, have been equally made applicable to the case of dismissal or discharge. The underlying tone of all these authorities is common and it narrows down the scope of the Tribunal and/or the Labour Court to a considerable extent. In other words, the Tribunal or the Labour Court unless and until the aforesaid factors exist, cannot interfere with the question of dismissal or discharge. The aforesaid decision of the Division Bench of this Court and the English decision and also the decisions of the learned Single Judges of this Court already referred to by me neatly carve out the circumstances in which judicial review is possible. Not only that but while exercising the power the Labour Court or the Tribunal has to assign cogent and reliable reasons, to arrive at rational conclusion and in terms to record its satisfaction. It is just not enough to say that considering the degree of guilt established penalty of discharge or dismissal is not justified. Powers under Section 11-A of the Act are not to be exercised liberally or for the reason that Court or the Tribunal feels or merely opines that such harsh punishments ought not to have been imposed. Over years several decisions have been rendered by different Courts including the Apex Court and the clear guidelines have been determined and the scope ofr exercise of power under Sec. 11-A has been well defined. Despite that, if the Labour Court or Tribunal fails to follow these guide lines, this Court can certainly interfere with the decision of the Tribunalor Labour Court.

5.3. This issue has also time and again come before the Apex Court and first of its decisions came to be rendered in the case of Workmen of FINR Co. v/s. The Management reported in AIR 1973 S.C. at page 1227. I will revert to this authority at the time of dealing with the submissions made by Mr. Thakker. I may for the present turn to the decisions cited by Mr. Mehta. He has placed reliance on the decision rendered by the Apex Court in the matter of Union of India and anor. v/s. G. Ganayutham (dead) by L.Rs. reported in AIR 1997 S.C. at page 3387. The Apex Court has discussed the scope of the Court to interfere with the administrator's decision. It may be recalled here that Lord Diplock in 1983 had said that "proportionality" may also in future be one of grounds for judicial review of administrative action. In this decision the Apex Court has taken that factor into consideration and it has observed as under :-

> "The position of "proportionality" in administrative law in England and India can be summarized as follows :-

(1) To judge the validity of any administrative order or statutory discretion normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The Court would consider whether relevant matters had not been taken into account or whether irrelevant maters had been taken into account or whether the action was not bona fide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the Wednesbury test.

(2) The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English Administrative Law in future is not ruled out. These are the CCSU principles.

(3)(a) As per Bugdaycay, Brind and Smith, as long as the European Human Rights Convention (Convention) is not incorporated into English Law, the English Courts merely exercise a secondary judgment to find out if the decision maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English Courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4)(a) The position in our country, in administrative law, where no fundamental freedoms

are involved, is that the Courts/Tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the Court is to be based on Wednesbury the CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the Courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms."

This decision also elaborately discusses the role of the Court in the cases under administrative law where no fundamental freedoms are involved. According to the Apex Court, in such cases the Courts/Tribunals will only play a secondary role while primary judgment as to reasonableness will remain with the executive or the administrative authority. So far as the reasonableness is concerned, it refers to the principles laid down by Lord Greene and Lord Diplock respectively in the cases came to be known as Wednesbury case and the GCHQ case.

5.4. The test of Wednesbury and the principle of "proportionality" again came to be considered by the Apex Court in the decision rendered in the case of Om Kumar v. Union of India reported in AIR 2000 S.C. at page 3689.

"24. We agree that the questionof the quantum of punishment in disciplinary matters is primarily for the Disciplinary Authority and the jurisdiction of the High Courts under Art. 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well known principles known as Wednesbury principles. (See Associated Provincial Picture Houses v. Wednesbury Corporation (1948) 1 KB 223). This Court had occasion to lay down the narrow scope of the jurisdiction in several cases. The applicability of the principle of 'proportionality' in Administrative Law was considered exhaustively in Union of India v.

Ganayutham (1997) 7 SCC 463 : (1997) AIR SCW 3464 : AIR 1997 SC 3387 : 1987 Lab IC 3341), where the primary role of the Administrative and the secondary role of the Courts in matters not involving fundamental freedoms, was explained.

25. We shall, therefore, have to examine the cases of Sri Om Kumar and of Sri Virendra Nath from the standpoint of basic principles applicable under Administrative Law, namely, Wednesbury principles and the doctrine of proportionality. It has, therefore, become necessary to make reference to these principles and trace certain recent developments in the law.

1(a) Wednesbury principles :

26. Lord Greene said in 1948 in the Wednesbury case that when a statute gave discretion to an Administrator to take a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or other of the following conditions were satisfied - namely the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered; or the decision was one which no reasonable person could have taken. these principles were consistently followed in UK and in India to judge the validity of administrative action. It is equally well known that in 1983, Lord Diplock in Council for Civil Services Union v. Minister of Civil Service [1983] 1 SC 768 (called the GCHQ case) summarised the principles of judicial review of administrative action as based upon one or other of the following - viz. illegality, procedural irregularity and irrationality. He, however, opined that 'proportionality' was a "future possibility".

(b) Proportionality :

27. The principle originated in Prussia in the nineteenth century and has since been adopted in Germany, France and other Euporean countries. The European Court of Justice at Luxembourg and the European Court of Human Rights at Strasbourg have applied the principle while judging the validity of administrative action. But even long before that, the Indian Supreme Court has applied the principles of 'proportionality' to legislative action since 1950, as stated in

detail below.

28. By 'proportionality', we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the Legislature or the Administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the Court will see that the Legislature and the administrative authority 'maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve.' The Legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the Court. That is what is meant by proportionality."

Again it is further observed by the Apex Court in this decision as under :-

"68. Thus, when administrative action is attacked as discriminatory under Art. 14, the principle of primary review is for the Courts by applying proportionality. However, where administrative action is questioned as 'arbitrary' under Art. 14, the principle of secondary review based on Wednesbury principles applies.

Proportionality and punishments in service law :

69. The principles explained in the last proceedings paragraph in respect of Art. 14 are now to be applied here where the question of 'arbitrariness' of the order of punishment is questioned under Art. 14."

Both the aforesaid decisions of the Apex Court elaborately discuss the Wednesbury test and the principle of "proportionality". Though according to Lord Diplock in 1983 the proportionality was the 'ground in future' for judicial review of the administrative action, the Apex Court in the case of Om Kumar (supra) has observed that Indian Supreme Court had applied the principle of

'proportionality' to legislative action since 1950. However, in the case of Union of India v. G. Ganayutham (supra) and in the case of Om Kumar (supra) the principle of 'proportionality' vis-a-vis the administrative action has been taken into consideration and in the latter it has been laid down that when the administrative action is attacked as discriminatory under Article 14, the principle of primary review can be followed by the Court by applying proportionality. However, when the administrative action is questioned as arbitrary under Article 14 the principle of secondary review based on Wednesbury principle has to be applied. Thus, the aforesaid decisions of the Apex Court bifurcate the administrative action in two, namely (1) violative of fundamental rights and (2) violative of rights which are not fundamental. They lay down that when fundamental freedom is involved and the decision of the administrator adversely affects the fundamental right, the principle of proportionality can be applied and the Court may assume primary role. Again in the case of Om Kumar (supra) the Apex Court further clarified that when the administrative decision is challenged on the ground of hostile discrimination under Article 14, the Court can assume primary role and apply the principle of proportionality. However, if the said decision is challenged as violative of Article 14 of the Constitution of India simply on the ground of it being arbitrary, the Court has to apply the principle of secondary review based on the Wednesbury principle. The Wednesbury principle/case as already stated above, describes that Court can interfere with administrative action/order only when it finds that the decision was illegal or suffered from procedural impropriety or it was one which no sensible decision maker could have taken such decision, on the material before him and within the frame work of the law. The Court can also find out whether while arriving at the impugned decision the administrative authority has taken into consideration the relevant matters or that relevant matters have not been taken into consideration. The said principle/test also permits the Court to consider whether the decision was absurd or perverse. However, the said test prohibits the Court from going into the choice made by the administrator amongst the various alternative open to him nor could the Court substitute its decision to that of the administrator.

5.5. Now the question is whether the Wednesbury test and principle of proportionality can be brought into play while considering the scope of powers conferred upon the Labour Courts and the Tribunals by provisions of section 11-A of the Act ? Considering the

decisions discussed above of the Apex Court as well as this Court, the answer has to be in positive. As already discussed in the foregoing paras. of this judgment the powers of the Labour Court and Tribunal are not unguided and arbitrary and they are not to be exercised in accordance with the personal opinion of the person presiding over them. But they are to be used sparingly and strictly in accordance with the guidelines laid down by these decisions. The scope of judicial review is very limited and the power of Labour Court or Tribunal under that section is not arbitrary or absolute. If that be so, it has to be in accordance with Wednesbury test as the Wednesbury test is the only avenue open for the Court to exercise power under Section 11-A of the Act.

6. At this juncture it would also be necessary to refer to the decisions cited by Mr. N.K. Thakker in support of his contention that the Labour Courts and the Tribunals have wide powers under section 11-A to enter into the questions of fact, reappreciate the evidence and on the strength of the same, come to its own conclusion and to either set aside the order of discharge/dismissal or substitute the same with lesser penalty, if in the opinion of the Court or the Tribunal that the penalty imposed upon the delinquent is harsh considering the degree of guilt proved against him. Mr. Thakkar has placed reliance on the decision of the Apex Court rendered in the case of Workmen of M/s. Firestone Tyre & Rubber Co. of India P. Ltd. v/s. The Management reported in AIR 1973 S.C. p. 1227. This is one of the immediate decisions which came to be rendered after the introduction of section 11-A of the Act. The said decision lays down as follows :-

> "30. This will be a convenient stage to consider the contents of section 11A. To invoke section 11A, it is necessary that an industrial dispute of the type mentioned therein should have been referred to an Industrial Tribunal for adjudication. In the course of such adjudication, the Tribunal has to be satisfied that the order of discharge or dismissal was not justified. If it comes to such a conclusion, tile Tribunal has to set aside the order and direct reinstatement of the workman on such terms as it thinks fit. The Tribunal has also power to give any other relief to the workman including the imposing of a lesser punishment having due regard to the circumstances. The; proviso casts a duty on the Tribunal to rely only on the

materials- on record and prohibits it from taking any fresh evidence. Even a mere reading of the section. in our opinion, does indicate that A change in the law, is laid down by this Court, has been effected. According to the workmen the entire law has been completely altered; whereas according to the employers, a very minor change has been effected giving power to the Tribunal, only to alter the punishment, after having hold that the misconduct is proved. That is, according to the employers, the Tribunal has a mere power to alter the punishment after it holds that the misconduct is proved. The workmen, on the other hand, claim that the law has been rewritten.

31. We cannot accept the extreme contentions advanced on behalf of the workmen and the employers. We are aware that the Act is a beneficial piece of legislation enacted in the interest of employees. It is well settled that in construing the provisions of a welfare legislation, courts should adopt, what is described as a beneficent rule of construction. If two constructions are reasonably possible to be, placed on the section, it follows that the construction which furthers the policy and object of the Act and is more beneficial to the employees, has to be preferred. Another principle to be borne in mind is that the Act in question which intends to improve and safeguard the service conditions of an employee, demands an interpretation liberal enough to achieve the. legislative purpose. But we should not also lose sight of another canon of interpretation that a statute or for the matter of that even a particular section, has to be interpreted according to its plain words and without doing violence to the language used by the legislature. Another aspect to be borne in mind will be that there has been a long chain of decisions of this Court, referred to exhaustively earlier, laying down various principles in relation to adjudication of disputes by industrial courts arising out of orders of discharge or dismissal. Therefore it will have to be found from the words of the section whether it has altered the entire law, as laid down by the decisions, and, if so, whether there is a clear expression of that intention in the language of the section.

32. We will first consider cases where an employer has held a proper and valid domestic enquiry before passing the order of punishment. Previously the Tribunal had no power to interfere with its finding of misconduct recorded in the domestic enquiry unless one or other infirmities pointed out by this Court in Indian Iron & Steel Co. Ltd.(1) existed. The conduct of disciplinary proceeding and the punishment to be imposed were all considered to be a managerial function with which the Tribunal had no power to interfere unless the finding was perverse or the punishment was so harsh as to lead to an inference of victimization or unfair labour practice. This position, in our view, has now been changed by section 11A. The words "in the course of the adjudication proceeding, the Tribunal is satisfied that the order of discharge or dismissal was not justified" clearly indicates that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer, establishes the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct is correct. The limitations imposed on the powers of the Tribunal by the decision in Indian Iron & Steel Co. Ltd. (1). case can no longer be invoked by an employer. The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is 'correct; but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be so: and now it is the satisfaction of the Tribunal that finally decides the matter."

6.1. The second decision relied on by Mr. Thakker in support of his aforesaid contention is of learned Single Judge of the Karnataka High Court in the case between Mohini and General Manager, Syndicate Bank reported in 1995 (1) LLJ p. 351. It has been held in that decision as under :-

"Where the Tribunal is dealing with an industrial dispute, if it is satisfied that no enquiry has been held or that the enquiry held is not fair

and proper, or the findings recorded in the domestic enquiry are perverse, the whole issue is at large before the Tribunal. As a corollary, it follows that the power and jurisdiction of the Labour Court in examining the validity of the domestic enquiry far exceeds that of the writ court as it cannot go beyond the point of examining the validity of the enquiry to look into the merits of the charges framed against the employee. To that extent, therefore, the remedy provided by the Act is certainly more comprehensive than that available under Art. 226 of the Constitution."

Mr. Thakker has also relied on another decision of the Division Bench of this Court rendered in the case of Ashwin N. Acharya v. Okha Port reported in 1993 (2) G.L.H. P. 293. It has been observed as under :-

"10. The same result would follow if the question is examined from a different angle in the light of the alternative submission urged before us by Shri Patel for the petitioner. The petitioner's discharge from service was sought to be justified on the ground of his past misbehaviour. It transpires from the judgment of the Labour Court that it was not the case of the respondent herein in the course of the adjudication proceedings that the present petitioner was incorrigible with respect to his behaviour with his fellow workmen or with superior officers. In that view of the matter, the question arising before us is whether or not the extreme penalty of economic death should have been inflicted on him for his past lapses with respect to his behaviour. Section 11A of the Act empowers the forum named therein to substitute a less severe punishment for the punishment imposed by the employer on the workman. It would mean that it would be open to the forum created under the Act to examine the proportionality of punishment in the light of proved misconduct of the employee. For the time being we assume in favour of the respondent that the petitioner is found guilty of misconduct on account of his rude behaviour with his fellow workmen or with his superior officers. As aforesaid, it was not the case of the respondent before the Labour Court that he was incorrigible or beyond redemption. In that view of the matter, it was the duty of

> the Labour Court to have addressed itself on the question whether or not the punishment inflicted on the petitioner was disproportionate to the ground of his misconduct arising from his rude behaviour with his fellow workmen or with his superior officers. With respect, the learned Presiding Officer of the Second Labour Court has missed tis aspect of the case. We find that the extreme punishment of severance of the tie of employment inflicted on the petitioner in this case is grossly disproportionate to his misconduct arising from his alleged rude behaviour with his fellow workmen or with his superior officers and more particularly so when his apologies were accepted. Different considerations might have arisen if his apologies were not accepted and the charge-sheet might have come to be issued for his such misconduct of rude behaviour. Once we come to the conclusion that the punishment inflicted on the petitioner is out of proportion, we have only to set aside such punishment."

These decisions if scrutinised carefully, it has been laid down therein that with the introduction of section 11-A in the Act the Labour Court and the Tribunal have been conferred with the power of finding out whether the inquiry that was held against the delinquent was legal and in consonance with the principles of natural justice. (Even prior to amendment this power was there). Further to find out by reappreciating the evidence whether the conclusions arrived at by the authority are proper and whether the penalty imposed upon the delinquent, vis-a-vis the degree of proved guilt is justified. There cannot be any dispute with regard to these powers. However, these decisions do not lay down the principle or the guidelines in accordance with which these powers are required to be exercised. So far reappreciation of the evidence is concerned, naturally with a view to find out the justification of imposing penalty of discharge/dismissal by the employer upon the workman, the Labour Court or the Tribunal has to carry out fact finding exercise but to quash the decision or to substitute the said decision with its own, the Labour Court or the Tribunal has to act within the framework of the Wednesbury principle. Unless that test is satisfied and the cogent and reliable reasons for arriving at such satisfaction are adequately narrated and the conclusions drawn are properly recorded in the order, such decision of the authority for the employee cannot be set aside or

altered. In other words, the Labour Court/Tribunal is not only required to conclude that the action/decision of the employer is illegal or perverse or so disproportionate that it shocks the judicial conscience or it is based on irrelevant material or the relevant material has not been taken into consideration or that it is so unreasonable that no prudent man could have made such decision. The Tribunal is also required to put on record the reasons for arriving at such conclusions. The decisions cited by Mr. Thakker do not deal with this aspect. The issue in controversy has been adequately dealt with by the decisions that have been cited by Mr. Mehta. Mr. Mehta has also relied on two decisions of the Apex Court delivered in the case of Sanchalakshri v. Vijayakumar Raghuvirprasad Mehta reported in (1998) 8 S.C.C. p. 245 and in the case of Shriji Vidyalaya v. Patel Anilkumar Lallubhai reported in (1998) 9 S.C.C. p. 561. Both these decisions are in respect of a dispute which had arisen under the provisions of the Gujarat Secondary Education Act, 1972. The scope of the powers of the Tribunal constituted under the said Act while reviewing of the orders passed by the management in disciplinary matters and to give its own findings and to substitute the punishment has been considered. The provisions of the powers of the Tribunal set up under the said Act are para-meteria with the provisions conferred upon the Labour Courts and Tribunals under Section 11-A of the Act. In both these decisions the Apex Court has considered the case of B.C. Chaturvedi v. Union of India reported in JT (1995) 8 S.C. 65 and has arrived at the same conclusion.

7. This brings me to the question whether the Tribunal has while reaching the aforesaid conclusion has followed the aforesaid well recognised principles. The perusal of the award passed by the Tribunal will show that so far the validity of the inquiry proceedings is concerned, it has come to the conclusion that the same had been in consonance with principles of natural justice and no illegality had been committed in procedure. It was therefore required to go into the evidence to find out whether the conclusions arrived at by the Inquiry Officer were proper and the charges levelled against the respondent were held proved and also to find out whether the penalty of discharge from service was justified. The Tribunal for that purpose has reappreciated the evidence adduced before the Inquiry Officer and it has come to various conclusions which are by and large not on the line of the Inquiry Officer. However, the Tribunal has ultimately come to a conclusion which can be reproduced as below :-

"..... All these charges have been consolidated and on overall evaluation of the charges, it appears that there is no sufficient record or evidence against the delinquent so as to impose punishment of discharge on the workman. Therefore, the punishment of discharge is liable to be set aside. Now, on overall appreciation, it appears that due to some sort of bitterness between then workman and staff members, the workman has committed some misconduct. In my opinion, it would be just, proper and in the interest of justice if punishment of withholding the increment with future effect is imposed upon the delinquent and I therefore, pass the following order."

7.1. Nowhere during the course of the judgment the Tribunal appears to have followed the aforesaid guidelines or the Wednesbury test. When it was reappreciating the evidence and on the strength of it, was reaching to different conclusions and ultimately it has substituted the punishment, it was incumbent upon it to follow aforesaid guidelines. It was only upon finding that the decision of the authority was illegal or that it was based on material not relevant or relevant material was not taken into consideration or that it was so unreasonable, that no prudent man could have reached to such decision or that it was disproportionate to the nature of the guilt held established so as to shock the judicial conscience, the Tribunal could have substituted the penalty. The entire text of award of the Tribunal does not indicate this. There is not a whisper about the entire issue having been considered within the frame work of aforesaid guidelines. Moreover, the Tribunal has failed to assign cogent and reliable reasons for reaching its conclusions. It has dealt with the same by saying that some misconduct had been committed by the respondent for which, in its opinion, the punishment of discharge was not justified but stoppage of one increment with future effect would meet the ends of justice. This is not permissible in law. The Tribunal has to follow the guidelines that have been prescribed by the Apex Court and this Court and if it has failed to do so, this Court has power to interfere with the decision of the Tribunal. Sitting under Article 227 of the Constitution of India it is permissible for me to atleast ascertain from the record that whether the decision reached by the Tribunal is based on proper exercise of power conferred upon it by section 11-A of the Act or it is otherwise as has been

laid down in the case of Rajkot Municipal Corporation v/s. Navinchandra (supra). If it is found to be otherwise, seating under Article 227 of the Constitution of India, I can certainly quash such decision. This also answers to the contention raised by Mr. Thakker with regard to my power under Article 227 of the Constitution of India.

8. Lastly this brings me to the contention raised by Mr. Mehta to the effect that the acts of misconduct are required to be judged in the light of the fact that the concerned employee is attached to which institution. In other words, according to Mr. Mehta, the respondent was behaving in such a fashion that some valued clients of the bank may decide to discontinue their accounts with the bank It may not only tarnish the reputation of the bank, but it may ultimately cause financial loss to the bank. There is some merit in the submission advanced by Mr. Mehta. As already stated above, there are institutions and institutions and a particular type of misconduct may affect one institution to a great extent, whereas the same act of misconduct may adversely affect a different institution at much lesser extent. The bank has different type of clientage and if the employee of the rank of Peon misbehaves with them, the clients are bound to feel offending and in all probabilities they may discontinue their transactions with the bank. For example, a Chowkidar of jewelry shop is alleged of committing act of misconduct of sleeping while on duty, it has to be viewed very seriously because on account of dereliction of duty valuable articles from the jewelry shop are likely to be stolen. As against that the same act of misconduct with regard to a Chowkidar of a small public garden cannot be viewed that seriously. This aspect has also not been considered by the Tribunal.

9. For the foregoing reasons, I find that the decision of the Tribunal is required to be quashed and set aside. The same is, therefore, quashed and set aside. Considering the fact that respondent has been working with the petitioner bank right from the year 1951 and he had put in 30 years of service before he was discharged from the service and that now he has retired and reached at the age of about 70 years, it is recommended that the petitioner may consider his case for payment of back wages for the period in question at the rate of 50%. This is merely a recommendation and not a direction and it is for the bank to take the decision in this behalf. With this observation, this petition stands allowed. Rule made absolute with no order as to costs.

[Akshay H. Mehta, J.]

* Pansala.